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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 LEVELFIELDS, INC., individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 REDDIT, INC., a California Corporation,

19 Defendant.

Case No. 3:24-cv-02760-WHO

HON. WILLIAM H. ORRICK

**PLAINTIFF'S OPPOSITION TO THE
MOTION TO COMPEL INDIVIDUAL
ARBITRATION, DISMISS CLASS
CLAIMS, AND STAY ACTION OF
DEFENDANT GUARANTEED RATE
INC.**

Hearing

Date: August 28, 2024

Time: 2:00 p.m.

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I. INTRODUCTION

Reddit, Inc.'s ("Reddit") motion to dismiss mischaracterizes the claims and the complaint's allegations underlying those claims made by Plaintiff Levelfields, Inc. ("Plaintiff"). Plaintiff has adequately pleaded its claims and has standing to pursue them. Reddit's motion should be denied for the following reasons:

Plaintiff has Article III Standing. Reddit argues that Plaintiff lacks standing because it has not alleged a sufficient injury. This is incorrect. Plaintiff has alleged that it was charged for clicks that did not result in corresponding traffic to its website. This is a concrete financial injury. Levelfields has also alleged that this injury is traceable to Reddit's conduct of charging for clicks that were not delivered to users. Finally, Plaintiff's injury is redressable.

Plaintiff has stated a claim for breach of contract. Reddit argues that Plaintiff has not identified a specific provision of the contract that Reddit breached. This is wrong. Reddit's advertising contract specifies that advertisers are only charged for ads that are "delivered," meaning ads that are clicked by users. Plaintiff alleges that Reddit charged for clicks that did not happen, as the number of clicks charged by Reddit does not match the traffic logged on Plaintiff's servers. Since clicks on Reddit ads lead directly to the Plaintiff's website, the number of clicks and website traffic should be roughly equal. This discrepancy shows Plaintiff was billed for clicks that did not result in users visiting their website. In addition, Plaintiff alleges that Reddit breached its express promise to "use reasonable means to ensure that the Ad is delivered according to [advertiser's] criteria." Reddit did not use reasonable means to ensure that Plaintiff's ads were delivered to real users, as evidenced by the fact that Plaintiff's system did not log traffic corresponding with the clicks it was charged for and that Reddit represented to Plaintiff that it did not have the corresponding IP addresses that originated the clicks for which it charged Plaintiff.

Plaintiff has standing and has stated a claim under the UCL. Reddit argues that Plaintiff lacks standing under the UCL because it is a corporation. However, the UCL

1 applies to all persons, including corporations. Reddit also argues that Plaintiff has not
2 alleged an economic injury. This is incorrect. As stated above, Plaintiff has alleged that
3 it was financially injured by being charged for clicks that Reddit did not deliver. Finally,
4 Reddit argues that Plaintiff has not alleged any unlawful, unfair, or fraudulent business
5 practice. As explained below, this is also incorrect.

6 Plaintiff's claims are not barred by the contract's exclusive remedy provision.
7 Reddit argues that Plaintiff's claims are barred by the contract's exclusive remedy
8 provision, which requires Plaintiff to submit a claim for advertising credits within 45
9 days of the relevant invoice date. However, Plaintiff did bring a claim to Reddit and
10 Reddit refused to provide even the most basic information (a log of the clicks charged to
11 Plaintiff with the corresponding IP addresses) which is necessary to determine the
12 validity of the clicks.

13 For the foregoing reasons, Levelfields respectfully requests that the Court deny
14 Reddit's motion to dismiss.

15 **II. THE COMPLAINT ESTABLISHES ARTICLE III STANDING**

16 To confer standing, a plaintiff must establish three elements: (i) plaintiff suffered
17 an injury in fact; (ii) there is a causal connection between the defendant's conduct and the
18 alleged injury; and (iii) the injury is redressable by a favorable decision. *Lujan v. Defs. of*
19 *Wildlife*, 504 U.S. 555, 560 (1992). Reddit seeks dismissal complaint under Rule
20 12(b)(1), arguing that Plaintiff has failed to allege injury in fact sufficient to establish
21 Article III standing. [Doc. 21 ("Motion"), 7:2-3.] Reddit additionally argues that any
22 injury suffered by Plaintiff is not "fairly traceable" to Reddit "given the express
23 disclosures about the existence of click fraud on its platform." [*Id.* at 8:3-5.] Both
24 arguments fail.

25 Pursuant to its form contract (the "Reddit Advertising Platform Terms" or the
26 "Platform Terms"), Reddit only charges for ads that it "delivers":

27 When serving your Ad, Reddit will use *reasonable means* to
28 ensure that the Ad is *delivered according to your criteria*, but

1 Reddit does not guarantee in every instance that your Ad will
2 reach **users** with your selected criteria, reach the **users** that you
3 intended when you selected the criteria, and/or deliver any
4 specific result. You will pay for your use of the Platform after
5 ***your Ad is delivered*** based on Reddit’s calculation of amounts
6 due and ***Reddit’s measurement of the applicable billing***
7 ***metrics, such as impressions, views or clicks.***

8 [Doc. 1, ¶ 16 (emphasis added).]

9 Since the ads at issue here are billed on a per-click basis, the only possible
10 interpretation of the above language is that an ad is delivered when it is clicked by a user.
11 As discussed *infra*, Plaintiff alleges that Reddit charged for clicks that were not delivered
12 (i.e., clicks that were not made by users) and that Reddit failed to use “reasonable means
13 to ensure that the Ad is delivered according to [Plaintiff’s] criteria.” Specifically,
14 Plaintiff alleges that the number of clicks for which Reddit charged Plaintiff does not
15 match the amount of traffic logged on Plaintiff’s servers from those ads. [Doc., 1, at ¶
16 17.] Since every time a user clicks on an ad hosted by Reddit, the user is immediately
17 directed to Plaintiff’s website linked in that ad, for any given time period, the number of
18 clicks registered by Reddit on those ads should be identical (or nearly so) to the number
19 users whose browsers request that they be served with Plaintiff’s website linked in the
20 add (i.e., the traffic received by Plaintiff from the ads). The fact that these numbers did
21 not correspond establishes that Plaintiff was charged for clicks that Reddit did not *deliver*
22 to users.

23 When Plaintiff questioned Reddit about these clicks, requesting that it provide logs
24 for the traffic for which it was charging, Reddit provided a log of clicks without any
25 corresponding IP addresses, stating that it could not provide IP addresses. [Doc. 1, at ¶
26 18.] Reddit’s representation that it did not have IP addresses for the clicks it charged is
27 either false (because it does have the IP addresses and is unwilling to provide them
28 because it will show that it charged for clicks that Reddit did not deliver) or, if true,

1 demonstrates that Reddit is not expending even the most minimal effort – never mind
2 “use reasonable means” – to ensure it is providing what it promised and charged for
3 (since, for example, without IP addresses it is impossible to eliminate duplicative clicks
4 or eliminate clicks from known scammers). [*Id.*] In either case, Plaintiff suffered
5 cognizable harm, traceable to Reddit, which will be redressed by a favorable decision in
6 this case.

7 According to Reddit, Plaintiff’s allegations are insufficient to plead injury in fact
8 under Article III because Plaintiff must “identify specific clicks or traffic segment that it
9 paid for and now believes to be invalid.” [Doc. 21, 7:16-17.] Article III does not impose
10 this requirement and the cases cited by Reddit do not hold otherwise. The plaintiffs in
11 *Riordan v. W. Digital Corp.*, No. 5:21-CV-06074-EJD, 2022 WL 2046829, at *3 (N.D.
12 Cal. June 7, 2022), alleged to form of harm: (i) loss of their data due to a factory reset of
13 their storage devices by defendant and (ii) risk of future data misuse “if [their personal
14 data] has made its way into the hands of cyber-criminals.” Regarding the first asserted
15 loss, the court held that the plaintiffs failed to demonstrate that the loss of their stored
16 data caused them to suffer an injury in fact, explaining:

17 Plaintiffs fail to allege any details regarding the data loss or
18 how they were harmed by the loss. Instead, Plaintiffs blanketly
19 allege that the data was “deleted” from the Covered Products,
20 that they were “unable to recover the data deleted,” and that
21 they were “harmed both personally and economically as a
22 result.” [Citations.] ***Plaintiffs fail to describe whether their***
23 ***data was permanently lost, and/or whether another copy of***
24 ***the data was stored elsewhere.*** Further, for any data that may
25 have been lost, Plaintiffs fail to describe the type of data lost, or
26 explain why it was valuable and why its loss would cause harm.
27 ***Instead, Plaintiffs assume that the hack itself per se caused***
28 ***harm.*** This is improper. Without allegations that support

1 Plaintiffs’ assumption of harm, Plaintiffs have not established
2 an injury in fact.

3 2022 WL 2046829, at *3 (emphasis added).

4 Because the plaintiff’s *Riordan* did not “describe whether their data was
5 permanently lost, and/or whether another copy of the data was stored elsewhere[,]” there
6 was a question as to whether there was any loss whatsoever (since, for example, if the
7 data was stored elsewhere nothing was actually loss). In granting leave to amend, the
8 court explained that the plaintiffs could cure the defects “by alleging, among other things,
9 more particular facts as to what data was taken and whether the data has been misused.”
10 2022 WL 2046829, at *4.

11 Here, in contrast, Plaintiff has alleged that it was charged for clicks that Reddit did
12 not deliver. [Doc. 1, ¶ 17.] In other words, Plaintiff was charged for something it did not
13 receive. As explained by the Supreme Court, the monetary harm alleged here falls
14 squarely into the category of “harms readily qualify as concrete injuries under Article
15 III.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). “If a defendant has caused
16 physical or monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in
17 fact under Article III.” *Id.*; see also *Williams v. Apple, Inc.*, 449 F.Supp.3d 892, 905
18 (N.D. Cal. 2020) (“where plaintiffs plead that they were economically harmed because
19 they did not receive the ‘benefit of the bargain,’ plaintiffs have adequately alleged Article
20 III standing”) (citation omitted); *Siqueiros v. GM LLC*, 2021 WL 4061708, at *4 (N.D.
21 Cal. Sep. 7, 2021) (“Plaintiffs have Article III standing because they overpaid for their
22 vehicles is thus entirely consistent with the longstanding rule, reaffirmed in *Transunion*,
23 that monetary injuries are sufficiently tangible and concrete under Article III.”).

24 **III. PLAINTIFF HAS STATED A CLAIM FOR BREACH OF CONTRACT.**

25 Labeling Plaintiff’s breach of contract claim as “elusive,” Reddit argues that
26 Plaintiff has failed to specify in its complaint what contract provision Reddit breached
27 and how it breached that provision. [Doc. 21 (“Motion”), at 8:21-28.] The relevant
28 portion of Reddit’s Ad Platform Terms and Conditions (“Platform Terms”) is quoted in

1 Plaintiff's complaint:

2 When serving your Ad, *Reddit will use reasonable means to*
3 *ensure that the Ad is delivered according to your criteria*, but
4 Reddit does *not guarantee in every instance that your Ad will*
5 *reach users with your selected criteria, reach the users that you*
6 *intended when you selected the criteria, and/or deliver any*
7 *specific result. You will pay for your use of the Platform after*
8 *your Ad is delivered* based on Reddit's calculation of amounts
9 due and Reddit's measurement of the applicable billing metrics,
10 such as impressions, views or clicks. Amounts due are
11 exclusive of taxes.

12 [Doc. 1 ("Complaint"), at ¶ 16 (emphasis added).]

13 In its motion to dismiss, Reddit focuses on the disclaimers in its contract language
14 – that is, that Reddit “does not guarantee in every instance that your Ad will reach users
15 with your selected criteria, reach the users that you intended when you selected the
16 criteria, and/or deliver any specific result.” However, Reddit all but ignores the
17 obligations imposed on it this provision: (1) that Reddit will use *reasonable means to*
18 *ensure* that the Ad is *delivered* according to [plaintiff's] criteria; and (2) that Plaintiff will
19 pay when an “Ad is *delivered*.” Ads billed based on clicks (i.e., pay-per-click
20 advertising) are delivered when a *user* (not a bot) clicks on the link in the ad and is sent
21 to the website designated in that link – that is, an actual and actionable click. Here,
22 Plaintiff alleges that Reddit breached its contract with Plaintiff in two ways: first, by
23 charging Plaintiff for Ads that were *not delivered*; and second, by failing to use
24 *reasonable means to ensure* that that Plaintiff's Ads were *delivered* according to
25 Plaintiff's criteria.

26 **A. Reddit Breached the Platform Terms by Charging Plaintiff for Clicks**
27 **that Reddit Did Not Deliver.**

28 The first breach by Reddit is explained in paragraph 17 of Plaintiff's complaint

1 which alleges: “Reddit began charging Plaintiff for clicks, but Plaintiff’s system did not
2 log traffic which corresponded with the clicks they were charged for.” In other words,
3 Reddit charged Plaintiff for clicks made on Plaintiff’s ads (which would have
4 immediately directed the user’s browser to the website linked in the ad) but Plaintiff’s
5 servers showed no corresponding traffic on the website from these supposed clicks. Put
6 colloquially: Reddit told Plaintiff, “100 people clicked on your ad last month”; Plaintiff
7 responded, “That is not possible since only 45 people arrived at the website linked in that
8 ad.”

9 Although “Reddit does not guarantee *in every instance* that [Plaintiff’s] Ad will [i]
10 reach **users** with [Plaintiff’s] selected criteria, [ii] reach the **users** that [Plaintiff] intended
11 when [Plaintiff’s] selected the criteria, and/or [iii] deliver any specific result,” it does not
12 claim to have the right to charge for ads that were never delivered, clicks that never
13 happened, or clicks that were not made by users (such as, for example, a bot). It is
14 entirely rational that Reddit cannot guarantee that an ad will be clicked by users with
15 selected criteria (e.g., females with a college education between the ages of 35 and 45); it
16 is also rational for Reddit not to guarantee that the criteria selected by Plaintiff will result
17 in the ad reaching the users that Plaintiff intended to reach (e.g., people who are
18 interested in using Plaintiff’s services); and Reddit cannot guarantee that the ads will
19 deliver a specific result (e.g., a sale). These are all rational and commercially reasonable
20 limitations. What is not rational and commercially reasonable is an agreement that would
21 allow Reddit to charge for clicks regardless of whether a click was actually made and
22 regardless of whether that click was made by a user. The ad was not delivered in such
23 cases, so Reddit cannot charge for it. Here, Plaintiff asserts that Reddit breached its
24 contract by charging Plaintiff for clicks that never occurred or, if they did occur, were not
25 made by users. This constitutes a breach of the Platform Terms.

1 **B. Reddit Breached the Platform Terms by Failing to Use Reasonable**
2 **Means to Ensure that Ads Were Delivered According to the Criteria**
3 **Selected by Plaintiff.**

4 Not only did Reddit promise to charge only for those ads delivered to users (which,
5 as noted above, for pay-per-click advertising means charging only for those clicks made
6 by users), Reddit promised that it would “use reasonable means to ensure that the Ad is
7 delivered according to [Plaintiff’s] criteria.” Reddit also breached this promise as
8 asserted in paragraph 18 of Plaintiff’s complaint:

9 Plaintiff contacted Reddit to request their click logs which
10 would show associated IP addresses. Reddit, however,
11 provided click logs without IP addresses. *Reddit represented*
12 *that it was not able to provide IP addresses.* Plaintiff is
13 informed and believes that representation is false, because
14 Reddit has to know where traffic was coming from for security
15 and monitoring purposes. Alternatively, Reddit is failing to
16 provide minimal levels of security and monitoring of clicks on
17 its platform, in violation of its duties.

18 [Doc. 1, at ¶ 18 (emphasis added).]

19 According to Reddit, it does not have the IP addresses of the users who clicked on
20 Plaintiff’s ads.¹ If this is true, then Reddit is not using “reasonable means to ensure that
21 the Ad is delivered according to [Plaintiff’s] criteria.” Without the IP address of the
22

23 ¹ An IP address (Internet Protocol address) is a unique numerical label assigned to every device
24 connected to a computer network that uses the Internet Protocol for communication. Each device on a
25 network has a unique IP address, allowing it to be identified and differentiated from other devices. IP
26 addresses also provide information about the location of a device on the network, enabling data to be
27 routed correctly to its destination. IP addresses are essential for the functioning of the internet, as they
28 enable devices to communicate with each other and exchange data. When you do anything online, like
clicking a link to open a website or sending an email, your device uses its IP address to communicate
with other devices and servers on the internet. This is how the website knows where to send the
webpage you requested, or how your email gets delivered to the right inbox. See
https://en.wikipedia.org/wiki/IP_address (accessed July 2, 2024).

1 devices (or at least the network on which those devices are located) that are clicking on
2 an ad, Reddit has no way of knowing from where that click originates. Thus, for
3 example, Reddit would not be able to determine if the click is coming from an IP address
4 that has clicked the same ad 1,000 in the last day (which no actual “user” would do), is
5 originating from a region that does meet the criteria set by the advertiser (e.g., originating
6 from a network in Russia for a service that is only available in the United States) or is
7 coming from a network of known scammers. Reddit’s failure to employ this most
8 minimal level of security and monitoring of clicks is a breach of its promise to “user
9 reasonable means to ensure that the Ad is delivered according to [Plaintiff’s] criteria.”

10 **IV. PLAINTIFF HAS STANDING TO PURSUE AND HAS ADEQUATELY** 11 **PLEAD A CLAIM FOR VIOLATION OF THE UCL.**

12 **A. Plaintiff Has Standing to Pursue a Claim for Violation of the UCL.**

13 Reddit argues Plaintiff lacks standing to bring a UCL claim because it is a
14 company litigating a commercial dispute. [Doc. 21, at 10:3-4.] Reddit also improperly
15 seeks to introduce evidence extrinsic to the complaint and which is not subject to judicial
16 notice, that Plaintiff is a sophisticated party. Plaintiff objects to the consideration of this
17 evidence. The mere fact that Plaintiff is a corporate entity rather than an individual is
18 insufficient to preclude standing. Indeed, courts have uniformly held that businesses may
19 bring UCL claims. *Free Range Content, Inc. v. Google Inc.*, No. 14-CV-02329-BLF,
20 2016 WL 2902332, at *17 (N.D. Cal., May 13, 2016) (“Defendant misreads *Linear Tech*
21 to suggest that a business can never bring a UCL claim.”); *In re Webkinz Antitrust Litig.*,
22 695 F.Supp.2d 987, 999 (2010) (“The California UCL grants standing to companies of
23 varying size, to defend the rights of the general consuming public against unfair and
24 fraudulent business practices.”).

25 Reddit’s argument depends on a California appellate decision, *Linear Tech. Corp.*
26 *v. Applied Materials, Inc.*, 152 Cal.App.4th 115, 135 (2007), and its progeny, which
27 barred “sophisticated corporate customers” from pursuing UCL claims. However, *Linear*
28 ignored the UCL’s plain text by relying on cases predating the UCL’s amendment by

1 Proposition 64, before which any uninjured corporation could sue with “virtually the only
2 limitation on such actions [being] the plaintiff must be acting on behalf of ‘itself, its
3 members or the general public.’” *Rosenbluth Internat., Inc. v. Superior Court*, 101
4 Cal.App.4th 1073, 1075 (2002) (quoting former Cal. Bus. & Prof. Code § 17204). With
5 uninjured private litigants no longer able to pursue claims on behalf of the public, *Linear*
6 and its progeny have no bearing on UCL standing. See *In re Yahoo! Litig.*, 251 F.R.D.
7 459, 474-475 (C.D. Cal. 2008) (*Linear* “appears not to have recognized the apparent
8 change in the UCL's standing requirement”).

9 Furthermore, the plaintiff in *Linear* was one of the largest, publicly-traded
10 semiconductor manufacturing companies in the world, with \$1 billion in annual revenue.
11 That plaintiff had, in turn, brought UCL claims against some of the world's other largest
12 semiconductor manufacturing companies. *Linear*, 152 Cal.App.4th at 120. Against that
13 backdrop, the California Court of Appeal held that “sophisticated corporate customers”
14 (i.e., multi-national corporations that earn over \$1 billion in annual revenue) could not
15 resort to utilizing the UCL over a pure business dispute that did not involve the public in
16 any way (as individual consumers have nothing to do with multi-million-dollar
17 semiconductor fabrication equipment). *Id.* at 135.

18 Several courts have subsequently clarified the proper reach of *Linear*. For
19 example, *Ewert v. eBay, Inc.*, No. C-07-02198 RMW, 2010 WL 4269259, at *8 (N.D.
20 Cal. Oct. 25, 2010), held that *Linear* did not support the “broad proposition” that
21 “corporations and other business entities generally cannot seek relief under the UCL,
22 particularly if they have the independent resources to pursue direct claims against the
23 defendant.” The court noted that *Linear* not only involved “sophisticated corporate
24 customers,” but those customers negotiated and entered into individualized contracts with
25 the defendant. *Id.* at *8. The plaintiff in *Ewert* (like Plaintiff here), in contrast, entered
26 into a form contract with eBay and thus *Linear* was inapposite. *Id.* at *9., in contrast,

27 Likewise, in *Circle Click Media LLC v. Regus Mgmt. Group LLC*, No. 3:12-CV-
28 04000-SC, 2015 WL 6638929, at *4-5 (N.D. Cal. 2015), Judge Conti distinguished

1 *Linear* because those cases involved (i) “large corporations” or “sophisticated
2 corporations, most in the Fortune 1000” and (ii) “individually negotiated contracts
3 between sophisticated entities.” Unlike *Linear*, the plaintiffs in *Circle Click* had entered
4 into form contracts. *Id.* at 5.

5 Here, like in *Circle Click* and *Ewert*, Plaintiff entered into a form contract with
6 Reddit. *Linear* (to the extent it applies after Prop. 64) has no application here. Reddit
7 fails to provide any authority that, as a matter of law, a small business that entered into a
8 form contract with much larger corporation, lacks standing to pursue a claim for violation
9 of the UCL.

10 **B. Plaintiff Has Stated a Claims for Violation of the UCL Under the**
11 **Unlawful, Unfair and Fraudulent Prongs.**

12 “Unfair competition” includes “any unlawful, unfair or fraudulent business act or
13 practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code,
14 § 17200. The UCL’s “coverage is sweeping, embracing anything that can properly be
15 called a business practice and that at the same time is forbidden by law.” *Cel-Tech*
16 *Communications, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal.4th 163, 180 (1999) (internal
17 quotations and citation omitted). The UCL is written in the disjunctive creating “three
18 varieties of unfair competition – acts or practices which are unlawful, *or* unfair, *or*
19 fraudulent.” *Id.* (emphasis added). As such, satisfying any of the three prongs is
20 sufficient to survive a motion to dismiss. Here, Plaintiff has adequately pled all three.

21 *1. Plaintiff has properly pled a claim for violation of the UCL under*
22 *the unlawful prong.*

23 The UCL’s unlawful prong “borrows violations from other laws by making them
24 independently actionable as unfair competitive practices.” *CRST Van Expedited, Inc. v.*
25 *Werner Enterprises, Inc.*, 479 F.3d 1099, 1107 (9th Cir. 2007) (internal quotation marks
26 omitted). These other laws include civil, criminal, federal, state, municipal, statutory,
27 regulatory, and court-made laws. *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223
28 Cal.App.4th 1105, 1133 (2014). Under California law, the UCL can “borrow[] a common

1 law wrong to constitute a statutory unlawful business practice.” *CRST Van Expedited*,
2 479 F.3d at 1112–13 (internal quotations omitted) (reversing the district court's dismissal
3 of plaintiff's UCL claim, finding the plaintiff sufficiently alleged an intentional
4 interference with existing contracts of employment which served as a predicate violation
5 of the UCL).

6 Reddit argues that the unlawful prong of the UCL cannot be based on a breach of
7 contract. [Doc. 21, at 12:11-16.] Reddit is incorrect. *Integrated Storage Consulting*
8 *Services, Inc. v. NetApp, Inc.*, No. 5:12-CV-06209-EJD, 2013 WL 3974537, at *11 (N.D.
9 Cal. July 31, 2013) (“Common law theories can even form the basis for a cause of action
10 under the ‘unlawful’ prong of the UCL. As such, the Court finds that Plaintiff has stated a
11 claim for a violation of the UCL because it has sufficiently pleaded a breach of the []
12 Agreement[.]”); *Azco Biotech Inc. v. Qiagen, N.V.*, No. 12-CV-2599-BEN DHB, 2013
13 WL 4500782, at *14 (S.D. Cal. Aug. 20, 2013) (“Plaintiffs’ allegations of contractual
14 breach by IBS are a sufficient predicate for unlawful business practices.”); *In re*
15 *Facebook PPC Advertising Litigation*, 709 F.Supp.2d 762, 771 (N.D. Cal. 2010)
16 (“Plaintiffs’ allegation of a systematic breach of contract is a sufficient predicate for
17 unlawful business practices.”).

18 Because Plaintiff has pled a claim for breach of contract, and because that claim
19 can serve as a predicate for the UCL’s unlawful prong, the Court should find that Plaintiff
20 has sufficiently stated a claim under the UCL’s unlawful prong and deny Reddit’s motion
21 to dismiss on that ground.

22 2. Plaintiff has properly pled a claim for violation of the UCL under
23 the unfair prong.

24 “The ‘unfair’ prong of the UCL creates a cause of action for a business practice
25 that is unfair even if not proscribed by some other law.” *Kennard v. Lamb Weston*
26 *Holdings, Inc.*, 2019 WL 1586022, at *9 (N.D. Cal. Apr. 12, 2019) (citing *Korea Supply*
27 *Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1143 (2003)). A practice is “unfair” in
28 the consumer context under either the “balancing test” or the “public policy test.” *Backus*

1 *v. Gen. Mills, Inc.*, 122 F.Supp.3d 909, 929 (N.D. Cal. 2015) (noting Ninth Circuit’s
2 rejection of the “FTC test” in the consumer context). The balancing test examines
3 whether the plaintiff has alleged “that the harm to the public from the business practice is
4 greater than the utility of the practice.” *Id.* (citing *Rubio v. Capital One Bank*, 613 F.3d
5 1195, 1205 (9th Cir. 2010)). Under the public policy test, a plaintiff must allege “that a
6 practice ‘violates public policy as declared by ‘specific constitutional, statutory or
7 regulatory provisions.’” *Id.* (quoting *Rubio*, 613 F.3d at 1205). Reddit suggests that
8 Plaintiff must establish all of the factors for both of these tests. But that’s not the law. *See*
9 *In re MacBook Keyboard Litig.*, 2019 WL 1765817, at *9 (N.D. Cal. Apr. 22, 2019)
10 (denying motion to dismiss based only on balancing test); *Kennard*, 2019 WL 1586022,
11 at *10 (denying motion to dismiss UCL unfair prong claim even though “plaintiff fails to
12 allege any facts connecting defendant’s conduct to a ‘legislatively declared policy,’
13 because plaintiff’s allegations satisfy the balancing test”); *Backus*, 122 F.Supp.3d at 930
14 (holding plaintiff alleged unfair prong under balancing test). Accordingly, Plaintiff need
15 only adequately plead facts sufficient to meet either the “public policy test” or the
16 “balancing test,” not *both*. Thus, even if accepted, Reddit’s arguments regarding the
17 public policy at issue would not warrant dismissal because that factor only applies to the
18 “public policy test” – not the “balancing test.”

19 The balancing test “is fact intensive and is not conducive to resolution at the
20 motion to dismiss phase.” *In re MacBook*, 2019 WL 1765817, at *9. So, the test is not a
21 difficult one at this point. *See Ellsworth*, 908 F.Supp.2d at 1090 (finding that plaintiff’s
22 allegations “satisf[y] the balancing test given the lenient standard on a motion to
23 dismiss”); *Klein*, 202 Cal.App.4th at 1376 (“[w]hether a practice is ... unfair is generally
24 a question of fact which requires consideration and weighing of evidence from both sides
25 and which usually cannot be made on demurrer.”). Plaintiff’s allegations raise fact issues
26 and satisfy this test.

3. Plaintiff has properly pled a claim for violation of the UCL under the fraudulent prong.

Finally, Reddit argues that Plaintiff fails to state a claim under the UCL's fraudulent prong. [Doc. 21, at 13:23-14:20.] Here, Plaintiff alleges that Reddit represented that it would “use reasonable means to ensure that the Ad is delivered according to [Plaintiff’s] criteria.” [Doc. 1, at ¶ 16.] Plaintiff alleges that this representation is false because Reddit fails to record the IP addresses of users who click the ads that are hosted on its website, which is necessary to provide even minimal levels of security and monitoring of clicks. [Id. at ¶ 18.] This is a material misrepresentation that was likely to (and did) deceive reasonable consumers, including Plaintiff who agreed to advertise on Reddit’s platform.

Reddit argues that Plaintiff has failed to allege reliance on this representation. [Doc. 21, at 14:17-20.] But “a presumption, or at least of inference, of reliance arises wherever there was a showing that a misrepresentation was material.” *Bruton v. Gerber Prod. Co.*, No. 12-CV-02412-LHK, 2014 WL 172111, at *7 (N.D. Cal. Jan. 15, 2014) (quoting *In re Tobacco II Cases*, 46 Cal.4th 298, 327 (2009)). Reddit cannot legitimately argue that the misrepresentation alleged here was immaterial.

C. Plaintiff Lacks an Adequate Remedy at Law.

Relying on *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), Reddit argues that Plaintiff must establish inadequate remedy at law in order to proceed with its UCL claim. [Doc. 21, at 11:22-27.] In *Sonner*, the plaintiff, after more than four years of litigation, after defeating the defendant’s motion for summary judgment and two months before trial, sought leave to amend to drop her damages claim so that she could proceed to trial solely under the UCL. 971 F.3d at 837-838. The Ninth Circuit explained that the “obvious” reason for plaintiff’s strategy was “to request that the district court judge award the class \$32,000,000 as restitution, rather than having to persuade a jury to award this amount as damages.” *Id.* at 838. The defendant argued against plaintiff’s motion for leave to amend, citing futility since the proposed complaint would require

1 dismissal under the inadequate-remedy-at-law doctrine. *Id.* The district court warned that
2 upon dropping the damages claim, “it would be ‘open season’ on a motion to dismiss...”
3 *Id.* The plaintiff nonetheless proceeded with her motion, which was granted. *Id.* The
4 defendant thereafter moved to dismiss because the plaintiff had an adequate remedy at
5 law. *Id.* That motion was also granted. *Id.* In upholding the order of dismissal, the Ninth
6 Circuit noted that the “operative complaint does not allege that [plaintiff] lacks an
7 adequate legal remedy.” *Id.* at 844. “More importantly, [plaintiff] concedes that she seeks
8 the same sum in equitable restitution as ‘a full refund of the purchase price’—
9 \$32,000,000—as she requested in damages to compensate her for the same past harm.”
10 *Id.*

11 In contrast to *Sonner*, this case is in the pleading stage, and in the Ninth Circuit,
12 pleadings are allowed “in the alternative – even if the alternatives are mutually
13 exclusive.” *PAE Gov’t Servs. v. MPRI, Inc.*, 514 F.3d 856, 859 (9th Cir. 2007). Federal
14 Rules of Civil Procedure Rule 8(a)(3) also expressly authorizes demands for relief that
15 “may include relief in the alternative or different types of relief.” Here, Plaintiff
16 expressly pleads its claim for violation of the UCL in the alternative. [Doc. 1, at ¶ 34 (“to
17 the extent necessary, [Plaintiff pleads] this cause of action in the alternative.”).] This
18 alone is enough to dispose with Reddit’s argument. *Jeong v. Nexo Fin. LLC*, No. 21-CV-
19 02392-BLF, 2022 WL 174236, at *27 (N.D. Cal. Jan. 19, 2022) (“*Sonner* has limited
20 applicability to the pleading stage because it pertained to circumstances in which a
21 plaintiff dropped all damages claims on the eve of trial.”); *Freeman v. Indochino*
22 *Apparel, Inc.*, 443 F.Supp.3d 1107, 1114 (N.D. Cal. 2020) (“Plaintiff may allege claims
23 in the alternative at the pleading stage. The equitable remedies afforded by the UCL and
24 CLRA are expressly stated to be in addition to other available remedies at law.”).

25 Even if this court holds that Plaintiff must establish the lack of an “adequate”
26 remedy at law at the pleading stage, the Complaint does that by seeking injunctive relief,
27 a remedy not available at law. [Doc. 1, at ¶ 43.] Business and Professions Code Section
28 17203 makes injunctive relief “the primary form of relief available under the UCL,”

1 while restitution is merely “ancillary.” *Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758, 790
2 (2010). The right to seek injunctive relief is a wholly independent remedy from the right
3 to seek restitution and thus, even if a party cannot recover restitution, it can still seek
4 injunctive relief. *Id.* This request for an injunction distinguishes this case from *Sonner*.
5 *Sonner*, 971 F.3d at 842 (“Injunctive relief is not at issue . . .”). And, at the pleading
6 stage, its presence in the complaint is sufficient to allege the inadequacy of remedies
7 available at law. *Glassburg v. Ford Motor Co.*, No. 221CV01333ODWMAAX, 2021 WL
8 5086358, at *7 (C.D. Cal. Nov. 2, 2021) (injunctive relief is “not an available remedy at
9 law” and that the presence of a request for injunctive relief distinguished the case from
10 *Sonner*, holding that Plaintiff who requested injunctive relief “sufficiently pleaded an
11 inadequate remedy at law”); *Zeiger v. WellPet LLC*, 526 F.Supp.3d 652, 687 (N.D. Cal.
12 2021) (“[M]onetary damages for past harm are an inadequate remedy for the future harm
13 [at which] an injunction under California consumer protection law is aimed.”).

14 **V. REDDIT’S WAIVER ARGUMENT IS MERITLESS.**

15 Reddit argues that Plaintiff’s complaint should be dismissed because Plaintiff’s
16 claims are foreclosed by the following provision found in Section 3 of the Platform
17 Terms:

18 You will not and will not authorize any third party to generate
19 invalid or fraudulent impressions, clicks, or other desired
20 actions with respect to the Platform or to use any unauthorized
21 means to extract advertising or performance-related data from
22 the Platform. You acknowledge *that third parties may*
23 *generate impressions, clicks, or other desired actions with*
24 *respect to your advertisements for prohibited or improper*
25 *purposes. Your sole remedy for any prohibited or improper*
26 *third-party conduct with respect to the Platform is to make a*
27 *claim for advertising credit within 45 days of the applicable*
28 *invoice date* (the “Claim Period”).

1 [¶]

2 TO THE FULLEST EXTENT PERMITTED BY LAW, **YOU**
3 **WAIVE ALL CLAIMS RELATED TO PAYMENTS OR**
4 **CHARGES** UNLESS THE CLAIM IS MADE WITHIN THE
5 CLAIM PERIOD. ANY CREDITS WILL BE ISSUED IN
6 REDDIT'S SOLE, BUT REASONABLE, DISCRETION.

7 [Doc. 21-3 (“Exhibit B to Burkhardt Decl.”), § 3 at p. 3 (ECF page number) (bold
8 emphasis added).]

9 After noting that “that third parties may generate impressions, clicks, or other
10 desired actions with respect to your advertisements for prohibited or improper
11 purposes[,]” the first paragraph quoted above provides that the “sole remedy for any
12 **prohibited or improper third-party conduct** with respect to the Platform is to make a
13 claim for advertising credit within 45 days of the applicable invoice.” [Doc. 21-3, § 3 at
14 p. 3 (emphasis added).] The plain language of this provision establishes that it is limited
15 to prohibited or improper *third-party* conduct – *not* Reddit’s conduct. Importantly, this
16 provision is *not* broadened to include any claims **related to** “any prohibited or improper
17 third-party conduct”; instead it only address the “remedy **for** any prohibited or improper
18 third-party conduct.” [*Id.*] In contrast, the second above quoted paragraph applies to “all
19 claims **related to payments or charges.**” [*Id.* (emphasis added).] While every claim
20 arising “from prohibited or improper third-party conduct” would be “related to payments
21 or charges,” not every claim “related to payment or charges” will arise “from prohibited
22 or improper third-party conduct.” The Platform Terms fails to address this inconsistency.
23 The Platform Terms also fail to address how a claim must be made.

24 An additional, and much more fundamental inconsistency, is introduced in Section
25 12 of the Platform Terms, which provides in relevant part:

26 All claims arising out of or relating to these Terms will be
27 governed by California law, excluding its conflict-of-laws rules,
28 and will be litigated exclusively in the federal or state courts of

1 San Francisco, California. You and Reddit consent to personal
2 jurisdiction and exclusive venue in those courts. ***Neither party***
3 ***will be treated as having waived any rights by not exercising –***
4 ***or delaying the exercise of – rights under these Terms.***

5 [Doc. 21-3, § 12 at p. 4 (ECF page number) (emphasis added).]

6 Making a claim for advertising credit “for any prohibited or improper third-party
7 conduct with respect to the Platform,” is a right provided in the Platform Terms. [Doc.
8 21-3, § 3, at p. 3.] Section 3 of the Plaintiff Terms also provides that the failure to bring a
9 claim within the Claims Period results in a waiver of those claims “to the fullest extent
10 permitted by law.” This, however, directly conflicts with Section 12, which provides that
11 a party has not “waived any rights by rights by not exercising – or delaying the exercise
12 of – rights under these Terms.” [*Id.* § 12, at p. 4.] It is entirely unclear how these two
13 provisions should be reconciled. At a minimum, these two provisions create an
14 ambiguity in the Platform Terms. *TRB Invs., Inc. v. Fireman's Fund Ins. Co.*, 40 Cal.4th
15 19, 27 (2006) (contract language is ambiguous if it is “capable of two or more
16 constructions, both of which are reasonable.”). That ambiguity was created by Reddit,
17 the drafter of the Platform Terms. Under California law, if an unresolved ambiguity in a
18 contract remains, “the language of a contract should be interpreted most strongly against
19 the party who caused the uncertainty to exist.” Cal. Civ. Code § 1654; *Bade v. Bank of*
20 *America*, 67 Cal.App.4th 779, 798 (1998) (“When ambiguities in a standardized contract
21 ... cannot be dispelled by application of the other rules of contract interpretation, they are
22 resolved against the drafter.”). As such, the ambiguity must be resolved against Reddit.

23 Even if the claim process delineated in Section 3 of the Platform Terms could be
24 enforced (and they cannot), Plaintiff has satisfied this putative requirement. As explained
25 in the complaint, Plaintiff determined that it was being charged for clicks by Reddit
26 which did not correspond to traffic recorded on its systems’ logs. [Doc. 1, ¶ 17.] Plaintiff
27 thereafter contacted Reddit with the issue and requested that Reddit provide logs of the
28 clicks with the associated IP addresses so that Plaintiff could match its logs against those

1 from Reddit. [Doc. 1, ¶ 18.] Reddit, however, provided click logs without the associated
2 IP addresses, telling Plaintiff that it was not able to provide IP addresses for the supposed
3 clicks for which it was charging Plaintiff. [*Id.*] As noted above, the Platform Terms fails
4 to specify what form a claim must take. Under any possible, standard Plaintiff contacting
5 Reddit to report that it was being charged for clicks that did not correspond to traffic on
6 Plaintiff's servers and requesting that Reddit provide proof that traffic was actually sent
7 to Plaintiff constitutes a claim.

8 Reddit argues that even if Plaintiff satisfied the claim requirement, its claims are
9 nonetheless barred because "it submitted a claim for an advertising credit, which is an
10 appropriate remedy under the circumstances." [Doc. 21, 15:5-6.] In other words, Reddit
11 argues that either Plaintiff failed to make a claim (in which case the claim is waived
12 because Plaintiff did not make the claim within the Claims Period), or if a claim was
13 made it was denied by Reddit and therefore litigation is precluded since a claim for an
14 advertising credit is the sole remedy available to Plaintiff. In support of this argument
15 Reddit cites *Free Range Content, Inc. v. Google Inc.*, No. 14-CV-02329-BLF, 2016 WL
16 2902332, at *13 (N.D. Cal., May 13, 2016). *Free Range*, however, does not hold that a
17 plaintiff who makes and is denied claim is precluded from pursuing litigation. In fact,
18 two of the named plaintiffs before the court in that case made claims and survived the
19 motion to dismiss. *Free Range*, 2016 WL 2902332, at *13 (plaintiff "plead that both
20 [plaintiff] CIS and [plaintiff] FRC succeeded in disputing their payments within that
21 time"). The motion to dismiss as to the breach of contract claim was denied as to those
22 plaintiffs who made claims and was only granted as to the two plaintiffs (Ms. Chose and
23 Mr. Simpson) who did not make claims. *Free Range*, 2016 WL 2902332, at *19 (motion
24 to dismiss granted with leave to amend as to "any payment-related claims by Ms. Chose
25 and Mr. Simpson" and denied as to "Plaintiffs' breach of contract claim, except as
26 outlined above regarding payment-related claims by Ms. Chose and Mr. Simpson").

27 Accordingly, Reddit's waiver arguments fail.
28

1 **VI. IN THE ALTERNATIVE, THE COURT SHOULD GRANT LEAVE TO**
2 **AMEND.**

3 If the Court grants Reddit’s motion in whole or in part, Plaintiff requests leave to
4 amend the complaint. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (courts
5 “should grant leave to amend . . . unless it determines that the pleading could not possibly
6 be cured by the allegation of other facts.”).

7 **VII. CONCLUSION**

8 For each of the foregoing reasons, Plaintiff respectfully requests that the Court
9 deny Reddit’s motion to dismiss in full.

10
11 Dated: July 2, 2024

HAFFNER LAW PC

12
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